IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 1134 of 2006

DATE OF DECISION: September 14, 2006.

Hari Kishan
Vs.

State of Haryana

CORAM: HON'BLE MR.JUSTICE M.M.AGGARWAL.

PRESENT: Mr.M.S.Khaira, Senior Advocate with
Mr.Avinashi Singh, Advocate for petitioner.

Mr.S.S.Yadav, AAG, Haryana for respondent-State.

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JUDGMENT

This is a petition against order dated 15.4.2006 of Judicial Magistrate Ist Class, Hisar, whereby accused-petitioner was charge-sheeted for offence under Sections 420/467/468/471 IC.

FIR in this case had been registered at the instance of Naib Tehsildar on the allegation that when he went to village Chikanwas for scrutinizing / sanctioning of mutation on 21.9.2005, then he found an application received from Harikishan son of Mathura resident of village Kharbala through Deputy Commissioner, Hisar, along with photo-copy of the Will dated 12.12.1997, with a request that mutation be sanctioned on the basis of Will, but then it was found that word “Chikanwas' and word 'Kul' had been added on the second page of the Will. When record from Sub-Registrar office was checked, it was found that these had been added by Harikishan in the copy, whereas these were not in the original one and, as such, Harikishan had committed forgery and, therefore, case be registered and action be taken.

Police after investigation had presented the challan and thereafter charges were framed.

Counsel for the petitioner had argued that the Will was that of Smt. Chahi, who was mother of the petitioner. The Will was in favour of the sons of the petitioner. Smt. Chahi had left behind one son i.e. present petitioner and one daughter namely, Kishan Dei, who had executed an affidavit agreeing to the Will and also that property of both villages namely Kharbala and Chikenwas be mutated on the basis of Will in the names of the sons of the petitioner. It was argued by counsel for the petitioner that if the Will was only in respect of the property stated to be in village Kharbala and not of village Chikenwas, then petitioner and his sister would have been the only heir of Smt. Chahi and would have got the property of village Chikenwas. That there could be no intention on the part of the petitioner to commit forgery by adding word "Chikenwas". It was argued that even if the word "Chikenwas' had been added, still no injury or loss was there to any person and, as such, offences under Sections 467/468/471 etc IPC were not made out. In this connection, Judgment of the Hon'ble Supreme Court reported as **Dr.Vimla Vs. The Delhi Administration air 1963 SC 1572** has been relied.

Copy of the Will dated 12.12.1997 of Smt.Chahi shows that she was resident of village Chikenwas. However, her original village was Kharbala. She had made the Will in respect of whole of the properties situated in village Kharbala in favour of her grandsons who happen to be sons of the present petitioner. From perusal of the application submitted by Harikishan to the Deputy Commissioner Hisar, which was sent to the Naib Tehsildar, it would come out that Harikishan had stated that Smt. Chahi had died on 22.12.1997. That Smt.Chahi had property in village Chikenwas and Kharbala and the request was for sanctioning of mutation in respect of the property stated to be in village Chikenwas. It was also mentioned that mutation of the property stated to be in village Kharbala had already been sanctioned.

Forgery had been defined in Section 463 Cr.P.C as under:

> "[Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage

> or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. "

Offence under section 467 IPC is made out when there is forgery of valuable security including Will. Whereas Section 468 is made out when forgery is committed for the purpose of cheating. Offence under Section 471 is made out when forged document is used as a genuine document.

In the present case the Will was not forged. Word "Chikenwas" had been added to show that Will was in respect of the property stated to be in village Chikenwas, as well. In fact, this act would come within the definition of making a false document as given in Section 464 IPC. It reads as under:

> "464 Making a false document.- [A person is said to make a false document or electronic record-
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> **Secondly**- who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or"

In the present case, alteration had been made but it cannot be said that alteration was with an intention to cause damage or injury to anybody. It appears that while getting the Will executed from Smt. Chahi, property of Smt. Chahi was written only in village Kharbala whereas Smt. Chahi had in fact property in village Chikenwas as well. Harikishan present petitioner was witness of the Will If there had been no will, then the property in due course after her death would have gone to natural heirs. Petitioner happens to be son and Smt. Kishan Dei who was daughter of Smt.Chahi happens to be sister of Harikishan has given an Affidavit that the Will was executed with her consent

and it was in respect of the property of both the villages. There was no other natural heir.

Under these circumstances, the alternation, if any, was not with intention to cause damage or injury to any person. As such, there had been no prima facie case to frame charge. Continuing the proceeding will be just a futile exercise.

This petition is allowed. Order dated 15.4.2006 framing charge against the petitioner is set aside. petitioner shall stand discharged.

(M.M.Aggarwal)
September 14, 2006 **Judge**

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